

Law Department

FEB 3 - 1981 - 11 15 AM

INTERSTATE COMMERCE COMMISSION

Chessie System

February 3, 1981

Terminal Tower

P. O. Box 6419

Cleveland, Ohio 44101

216 623 2200

Ms. Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

No.

FEB 09 1981

Date.....

Fee \$ 50.00

Attention: Ms. M. R. Lee, Room 2303
Recordation Unit

ICC Washington, D. C.

Dear Ms. Lee:

Enclosed are four executed counterparts of an Agreement dated February 1, 1981, between The Chessie Corporation and The Chesapeake and Ohio Railway Company. This Agreement constitutes an interim user agreement, allowing use of the equipment described below pending completion of permanent financing. The names and addresses of the parties are as follows:

Bailor: The Chessie Corporation
P. O. Box 6419
Cleveland, Ohio 44101

Bailee: The Chesapeake and Ohio Railway Company
P. O. Box 6419
Cleveland, Ohio 44101

The equipment covered by the above documents consists of 228 100-Ton Open Top Hopper Cars, to bear Bailee's Road Nos. 189950-190177, inclusive, AAR Mechanical Designation: HT. The equipment will be marked "Chesapeake and Ohio Railway," "Chesapeake and Ohio," "C&O" or "Chessie System" or in some other appropriate manner and also will be marked "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

Also enclosed is a draft in the amount of \$50 representing the required recordation fee.

Pursuant to the Commission's rules and regulations for recordation of certain documents under 49 U.S.C. §11303, you are hereby requested to file one of the enclosed counterparts for record in your office and return the remaining copies to me. Please telephone me collect upon recordation of the enclosed documents.

Very truly yours,



Louis Recher
Attorney

Enclosures (4)



The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and The Greenbrier.

RECEIVED
FEB 9 1981
FEE OPERATION

FEB 9 - 1981 - 11 15 AM

INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

Dated as of February 1, 1981

between

THE CHESSIE CORPORATION

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Covering

228 100-Ton Open Top Hopper Cars

THIS AGREEMENT, dated as of February 1, 1981, between THE CHESSIE CORPORATION, a Delaware corporation (Manufacturer), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O):

WITNESSETH:

The Manufacturer and C&O heretofore entered into a Purchase Agreement (which Purchase Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been made or may be agreed upon in writing between the Manufacturer and C&O, whereunder the Manufacturer agreed (among other things) to construct, at its Raceland, Kentucky plant, and to deliver to C&O at Raceland, Kentucky, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for, 228 100-Ton Open Top Hopper Cars (Hopper Cars), to bear C&O road numbers 189950-190177, inclusive.

As contemplated by said Purchase Agreement, C&O intends to finance the purchase of the Hopper Cars from the Manufacturer pursuant to an Equipment Trust Agreement to be dated as of March 1, 1981, but deliveries of the Hopper Cars are scheduled to begin on or about February 6, 1981, and C&O will not have established said financing arrangement by that time. C&O represents that such financing arrangement shall be established, however, on or before April 1, 1981. C&O, in order that it may use the Hopper Cars pending establishment of such financing arrangement, desires to have temporary custody and possession of the Hopper Cars upon their completion, solely as a bailee of the Hopper Cars, and the Manufacturer is willing to grant such temporary custody and possession to C&O upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O and C&O hereby accepts from the Manufacturer the Hopper Cars as of the date each of them is delivered to C&O at Raceland, Kentucky, or such other point or points as may be directed by C&O for the period ending on the earlier of April 1, 1981, or the date of

establishment of said financing arrangement. On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Hopper Car, C&O's representative shall execute a certificate of acceptance acknowledging the receipt of delivery of each such Hopper Car under this Agreement. Title to the Hopper Cars shall remain in the Manufacturer and C&O's rights and interests therein are and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale. C&O shall, without expense to the Manufacturer, promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, C&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Hopper Cars.

C&O agrees to permit no liens of any kind to attach to the Hopper Cars; and that it shall:

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Hopper Cars or the Manufacturer,

because of the Manufacturer's ownership or because of the use, operation, management or handling of the Hopper Cars by C&O during the term of this Agreement. C&O's obligations contained in this paragraph shall survive the termination of this Agreement.

C&O shall, at its own expense, keep and maintain the Hopper Cars in good order and running condition and shall, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Hopper Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Hopper Car to C&O under this Agreement, each such Hopper Car shall be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Hopper Car, in contemplation of the financing arrangement, as hereinbefore mentioned, the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

C&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Hopper Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Hopper Car, C&O shall immediately cause the same to be restored or replaced.

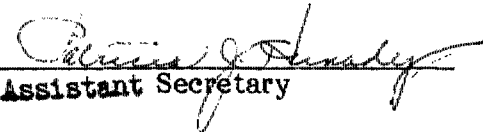
All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Hopper Cars as provided in the Purchase Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the Purchase Agreement. In the event the Manufacturer shall assign its rights to receive the payments herein and/or under the Purchase Agreement, and C&O shall receive written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

In the event of any such assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned shall not be subject to any defense,

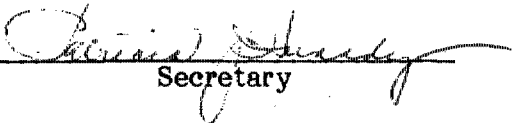
set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Hopper Cars, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees of such rights, benefits or advantages assigned pursuant to this Agreement).

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of the Hopper Cars, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Hopper Cars in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under said Purchase Agreement.


Attest:
(CORPORATE SEAL)


Assistant Secretary


Attest:
(CORPORATE SEAL)


Secretary

THE CHESIE CORPORATION

By 
Assistant Vice-President
and Treasurer

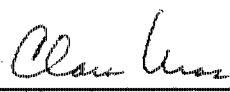
THE CHESAPEAKE AND OHIO
RAILWAY COMPANY

By 
Assistant Vice-President
and Treasurer

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 3rd day of February, 1981, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of THE CHESSIE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]



Notary Public

CLARA MASUGA, Notary Public
State of Ohio - Cuyahoga County
My Commission Expires April 21, 1984

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 3rd day of February, 1981, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Company, that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

[NOTARIAL SEAL]



Notary Public

CLARA MASUGA, Notary Public
State of Ohio - Cuyahoga County
My Commission Expires April 21, 1984